

CONSENT DECREE**I. INTRODUCTION**

1. The Enforcement Bureau of the Federal Communications Commission, ART Licensing Corp., and First Avenue Networks, Inc., by their authorized representatives, hereby enter into this Consent Decree to resolve an investigation by the Bureau regarding suspected violations of the Commission's Spectrum Manager Leasing Arrangements Rule, as defined herein. The investigation was undertaken pursuant to sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 403.

II. DEFINITIONS

2. For the Purposes of this Consent Decree, the following definitions shall apply:

- a. "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*;
- b. "Adopting Order" means an Order of the Bureau adopting this Consent Decree without change, addition or modification;
- c. "ART" means ART Licensing Corp. and includes any affiliate, predecessor-in-interest, parent company and any direct or indirect subsidiary of such parent company, or other affiliated company or business, and their successors and assigns;
- d. "ART Applications" means the three applications that ART filed on May 6, 2004, on FCC Forms 603, notifying the Commission that it had entered into spectrum leasing arrangements, bearing the following file numbers: 1726569, 1726577, and 1726591;
- e. "Bureau" means the Enforcement Bureau of the Federal Communications Commission;
- f. "Commission's Rules" means the Commission's regulations set forth in Title 47 of the Code of Federal Regulations;
- g. "Effective Date" means the date on which the Adopting Order is released;
- h. "First Avenue" means First Avenue Networks, Inc. and includes any affiliate, predecessor-in-interest, parent companies and any direct or indirect subsidiary of such parent company or other affiliated company or business, and their successors and assigns;
- i. "First Avenue Applications" means the 12 applications that First Avenue filed between May 6 and June 10, 2004, on FCC Forms 603, notifying the Commission that it had entered into spectrum leasing arrangements, bearing the following file numbers: 1726597, 1726607, 1735203, 1760932, 1763864, 1763873, 1771933, 1760853, 1760861, 1760945, 1760958, and 1767597;
- j. "FCC" or the "Commission" means the Federal Communications Commission;
- k. "Final Order" means that, with respect to the Adopting Order: (1) no request for stay or similar request is pending, no stay is in effect, the Adopting Order has not been vacated, reversed, set aside, annulled or suspended, and any deadline for filing such request that may

- be designated by statute or regulation has passed; (2) no timely petition for rehearing or reconsideration of the Adopting Order, or protest of any kind, is pending before the FCC and the time for filing any such petition or protest is passed; (3) the FCC does not have the Adopting Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (4) the Adopting Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed;
- l. "Investigation" means the investigation conducted by the Bureau of compliance by ART and First Avenue with the Spectrum Manager Leasing Arrangements Rule, in connection with the arrangements disclosed in the ART Applications and the First Avenue Applications;
 - m. "Parties" means the Bureau, ART, and First Avenue; and,
 - n. "Spectrum Manager Leasing Arrangements Rule" means Section 1.9020 of the Commission's Rules, 47 C.F.R. § 1.9020.

III. BACKGROUND

3. ART and First Avenue are commonly-owned, commercial and/or private licensees that hold exclusive use rights in one or more of the Wireless Radio Services referenced in Section 1.9005 of the Commission's Rules, 47 C.F.R. § 1.9005.

4. On May 6, 2004, ART filed the ART Applications, and between May 6 and June 10, 2004, First Avenue filed the First Avenue Applications. Thereafter, at the request of the Wireless Telecommunications Bureau, the Bureau commenced the Investigation of ART's and First Avenue's compliance with the notification requirements of the Spectrum Manager Leasing Arrangements Rule, pursuant to which, for spectrum manager leasing arrangements of one year or less, the licensee must provide notification to the Commission within 14 days of execution of the spectrum leasing arrangement and at least ten days in advance of commencing operation; and, for all other spectrum manager leasing arrangements, such notification must be provided within 14 days of execution of the spectrum manager leasing arrangement and at least 21 days in advance of commencing operation.

5. ART, First Avenue, and the Bureau acknowledge that any proceeding that might result from the Investigation will require the significant expenditure of public and private resources. In order to conserve such resources and to promote compliance by ART and First Avenue with the Act and the Commission's Rules, the Parties hereby enter into this Consent Decree in consideration of the mutual commitments made herein.

IV. AGREEMENT

6. ART and First Avenue each agrees that the Bureau, by delegated authority of the Commission, has jurisdiction over it and the matters contained in this Consent Decree, and the authority to enter into and adopt this Consent Decree.

7. ART and First Avenue each represents and warrants that the person executing this Consent Decree on its behalf is a corporate officer thereof and fully authorized to bind ART and First Avenue, respectively, to the terms and conditions of this Consent Decree.

8. The Parties agree that this Consent Decree shall be subject to final approval by the Bureau and shall not take effect unless and until adopted by the Bureau in an Adopting Order.

9. The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau and any violation of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Bureau order.

10. In consideration for the terms and conditions set forth herein, the Bureau agrees to terminate the Investigation. From and after the Effective Date, in the absence of material new evidence, the Bureau will not, on its own motion or in response to any petition to deny or other third-party complaint or objection, initiate, or recommend to the Commission the initiation of, any new proceeding against ART or First Avenue or both, formal or informal, regarding the matters discussed in paragraph 4, above. The Bureau further agrees that, in the absence of material new evidence, it will not use the facts developed in the Investigation prior to the Effective Date to initiate on its own motion, or recommend to the Commission, the initiation of any proceeding, formal or informal, or take any action on its own motion against either ART or First Avenue or both with respect to their respective basic qualifications to be or remain a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against either ART or First Avenue or both in the event of any alleged future misconduct for violation of this Consent Decree, or for violations of the Act or of the Commission's Rules, consistent with the provisions of this Consent Decree.

11. ART and First Avenue each admits, solely for the purpose of this Consent Decree and for FCC civil enforcement purposes, that, in connection with the arrangements disclosed in some of the ART Applications and the First Avenue Applications, respectively, each acted in a manner that was not in compliance with the notification requirements of the Spectrum Manager Leasing Arrangements Rule.

12. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement among them concerning the Investigation of the matters discussed in paragraph 4, above.

13. In consideration of the Bureau's termination of the Investigation into the matters discussed in paragraph 4, above, ART and First Avenue each agrees to the terms set forth herein.

14. ART and First Avenue agree that they shall make a voluntary contribution to the United States Treasury, for which they shall be jointly and severally liable, in the total amount of Twenty Thousand Dollars (\$20,000), within five (5) calendar days after the Effective Date. Such payment shall be made by check or similar instrument, payable to the order of the Federal Communications Commission. Such payment shall include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. ART and First Avenue each represents that it has adopted, and is currently in the process of implementing, a compliance plan for the purpose of ensuring future compliance with the Commission's spectrum leasing provisions set forth in Part 1, Subpart X of the Commission's Rules, 47 C.F.R. § 1.9001 *et seq.* A summary of each compliance plan is set forth in Attachment A hereto. ART and First Avenue each agrees to implement its compliance plan, to the extent that it has not already done so, within thirty (30) days of the Effective Date and to keep such compliance plan in effect for three (3) years thereafter.

16. ART and First Avenue each agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition of this Consent Decree is a separate condition of this Consent Decree, as approved. To the extent that ART and/or First Avenue fails to satisfy any condition, in the absence of Bureau alteration of the condition, ART and/or First Avenue will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, designation of the matter for hearing, issuance of an admonishment or imposition of a forfeiture.

17. ART and First Avenue each waives any claims that it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters discussed in this Consent Decree.

18. ART and First Avenue each waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. If any Party, or the United States on behalf of the Federal Communications Commission, brings a judicial action to enforce the terms of this Consent Decree, the Adopting Order or both, none of the Parties nor the Federal Communications Commission shall contest the continuing validity of the Consent Decree or the Adopting Order. The Parties further agree to waive any statutory right to a trial *de novo* with respect to any matter upon which the Adopting Order is based, and they will consent to a judgment incorporating the terms of this Consent Decree.

19. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

20. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

ENFORCEMENT BUREAU

Kris Anne Monteith, Chief

Date

ART LICENSING CORP.

Date

FIRST AVENUE NETWORKS, INC.

Date

ATTACHMENT A**COMPLIANCE PLAN OF FIRST AVENUE NETWORKS, INC.**

First Avenue Networks, Inc. (“First Avenue” or “Company”) is committed to full and complete compliance with the rules and policies of the Federal Communications Commission (“FCC” or “Commission”). In order to ensure such compliance, and in connection with the Consent Decree between the Enforcement Bureau and First Avenue, to which this document is appended, as Attachment A thereto, within thirty (30) days of the Effective Date (as defined in the Consent Decree), First Avenue will implement, and keep in effect for a term of three (3) years thereafter, the following Compliance Plan Regarding Spectrum Leasing Arrangements and Agreements (the “Compliance Plan”):

1. Within ninety (90) days of the Effective Date, counsel familiar with FCC spectrum leasing rules and policies will conduct training sessions for all First Avenue personnel engaged in spectrum leasing arrangements and agreements (“Covered Employees”). In addition, all new Covered Employees of First Avenue will undergo such training within sixty (60) days of the commencement of their employment. First Avenue also will provide refresher training for all Covered Employees on at least an annual basis. First Avenue will consult with private attorneys familiar with FCC spectrum leasing rules and policies in connection with the obligations set forth in this Consent Decree, including this Compliance Plan.
2. First Avenue will prepare and distribute, to all Covered Employees, a written compliance guide that sets forth First Avenue and Commission rules and policies for spectrum leasing arrangements and agreements. First Avenue will update the guide, as necessary.
3. First Avenue will designate an employee familiar with the Commission’s rules and policies relating to spectrum leasing arrangements and agreements to review all spectrum leasing arrangements and agreements before they are entered by the parties (the “Compliance Officer”).
4. The Compliance Officer will review each spectrum leasing arrangement and agreement to identify whether the arrangement or agreement is a *de facto* transfer or spectrum manager arrangement or agreement in accordance with the FCC’s rules and policies.
5. The Compliance Officer will review each spectrum leasing arrangement and agreement to ensure that it complies with the requirements contained in Section 1.9000 *et seq.* of the Commission’s rules, 47 C.F.R. § 1.9000 *et seq.*, as such rules may be amended from time to time during the term of this Compliance Plan, including, but not limited to, inclusion of Commission-mandated provisions in each arrangement or agreement and assurance that each spectrum leasing arrangement or agreement does not constitute an assignment, or sale of the license or transfer of control of the license holder.
6. The Compliance Officer will review each spectrum leasing arrangement or agreement to ensure that it is signed by authorized personnel of each signatory thereto.

7. Upon execution of each spectrum leasing arrangement or agreement, the Compliance Officer will ensure that all required documents, including, but not limited to all applications and notifications, are filed in a timely manner with the FCC in accordance with FCC rules and policies.
8. The Compliance Officer will ensure that a copy of each spectrum lease arrangement and/or agreement is maintained in the Company's records and will make it available to the Commission, promptly upon request.
9. The Compliance Officer will ensure that the FCC is notified in writing regarding any substantial and significant change in the information furnished by First Avenue in each application, notification and/or other submission relating to a spectrum leasing arrangement and/or agreement.
10. The Compliance Officer will ensure that each spectrum leasing arrangement and agreement complies with all rules and policies regarding spectrum leasing that the FCC has promulgated or will promulgate during the term of the Compliance Plan.

COMPLIANCE PLAN OF ART LICENSING CORP.

ART Licensing Corp. ("ART" or "Company") is committed to full and complete compliance with the rules and policies of the Federal Communications Commission ("FCC" or "Commission"). In order to ensure such compliance, and in connection with the Consent Decree between the Enforcement Bureau and ART, to which this document is appended, as Attachment B thereto, within thirty (30) days of the Effective Date (as defined in the Consent Decree), ART will implement, and keep in effect for a term of three (3) years thereafter, the following Compliance Plan Regarding Spectrum Leasing Arrangements and Agreements (the "Compliance Plan"):

1. Within ninety (90) days of the Effective Date, counsel familiar with FCC spectrum leasing rules and policies will conduct training sessions for all ART personnel engaged in spectrum leasing arrangements and agreements ("Covered Employees"). In addition, all new Covered Employees of ART will undergo such training within sixty (60) days of the commencement of their employment. ART also will provide refresher training for all Covered Employees on at least an annual basis. ART will consult with private attorneys familiar with FCC spectrum leasing rules and policies in connection with the obligations set forth in this Consent Decree, including this Compliance Plan.
2. ART will prepare and distribute, to all Covered Employees, a written compliance guide that sets forth ART and Commission rules and policies for spectrum leasing arrangements and agreements. ART will update the guide, as necessary.
3. ART will designate an employee familiar with the Commission's rules and policies relating to spectrum leasing arrangements and agreements to review all spectrum leasing

arrangements and agreements before they are entered by the parties (the “Compliance Officer”).

4. The Compliance Officer will review each spectrum leasing arrangement and agreement to identify whether the arrangement or agreement is a *de facto* transfer or spectrum manager arrangement or agreement in accordance with the FCC’s rules and policies.
5. The Compliance Officer will review each spectrum leasing arrangement and agreement to ensure that it complies with the requirements contained in Section 1.9000 *et seq.* of the Commission’s rules, 47 C.F.R. § 1.9000 *et seq.*, as such rules may be amended from time to time during the term of this Compliance Plan, including, but not limited to, inclusion of Commission-mandated provisions in each arrangement or agreement and assurance that each spectrum leasing arrangement or agreement does not constitute an assignment, or sale of the license or transfer of control of the license holder.
6. The Compliance Officer will review each spectrum leasing arrangement or agreement to ensure that it is signed by authorized personnel of each signatory thereto.
7. Upon execution of each spectrum leasing arrangement or agreement, the Compliance Officer will ensure that all required documents, including, but not limited to all applications and notifications, are filed in a timely manner with the FCC in accordance with FCC rules and policies.
8. The Compliance Officer will ensure that a copy of each spectrum lease arrangement and/or agreement is maintained in the Company’s records and will make it available to the Commission, promptly upon request.
9. The Compliance Officer will ensure that the FCC is notified in writing regarding any substantial and significant change in the information furnished by ART in each application, notification and/or other submission relating to a spectrum leasing arrangement and/or agreement.
10. The Compliance Officer will ensure that each spectrum leasing arrangement and agreement complies with all rules and policies regarding spectrum leasing that the FCC has promulgated or will promulgate during the term of the Compliance Plan.